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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

13 ANTHONY SWETALA, individually and on
14 behalf of all others similarly situated and the
15 general public,

16 CASE NO: 1:24-at-418

17 CLASS ACTION

18 **CLASS ACTION COMPLAINT**

19 Plaintiff,

20 v.

21 QUTEN RESEARCH INSTITUTE, LLC,

22 Defendant.

1 Plaintiff Anthony Swetala (“Plaintiff”), on behalf of himself, all others similarly situated,
2 and the general public, by and through his undersigned counsel, hereby sues Defendant Quten
3 Research Institute, LLC (“Defendant”) and, upon information and belief and investigation of
4 counsel, alleges as follows:

5 **I. INTRODUCTION**

6 1. Defendant makes, distributes, sells, and markets a wide variety of dietary
7 supplements under the brand name Qunol. The products at issue include the following, in any size,
8 count, or variation:

- 9 • Extra Strength Magnesium 420 mg;
- 10 • Magnesium Gummies 200 mg;
- 11 • Extra Strength Turmeric Curcumin Complex 1000 mg;
- 12 • Turmeric 2250 mg;
- 13 • Turmeric + Ginger 2400 mg
- 14 • Turmeric Gummies 500 mg;
- 15 • Turmeric 500 mg + Ginger 50 mg Gummies;
- 16 • Turmeric + Ginger Gummies 550 mg;
- 17 • Turmeric + Ginger Chews 750 mg;
- 18 • CoQ10 Gummies 100 mg; and
- 19 • Ultra Omega-3 Fish Oil 1000 mg

20 (collectively, the “Products”).

21 2. Defendant deceptively labels certain of its Qunol products by misrepresenting the
22 dosage amount of each capsule, gummy, or chew. Specifically, the front labels of the Qunol
23 Products prominently advertise a certain dosage amount, for example, “Extra Strength Turmeric
24 1000 mg.” The front labels also advertise the number of capsules, gummies, or chews included in
25 each Product, for example, 120 vegetarian capsules. Reasonable consumers are led to believe that
26 each capsule, gummy, or chew contains the advertised dosage amount, for example, 1,000 mg of
27 turmeric in each vegetarian capsule.

28 3. The truth, however, is that each capsule does not contain the advertised dosage

1 amount. Instead, each capsule, gummy, or chew contains only a fraction of the advertised dosage
2 and consumers must ingest two or more capsules to achieve the advertised dosage. As a result,
3 consumers grossly overpay for the Products, receiving only half or a third of the advertised value
4 while paying the full purchase price.

5 4. Plaintiff read and relied upon Defendant's advertising when purchasing the Qunol
6 Extra Strength Turmeric Curcumin Complex 1000 mg product and was damaged as a result.

7 5. Plaintiff brings this action on behalf of himself and all other similarly situated
8 consumers in the United States, alleging violations of the California Consumer Legal Remedies
9 Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA"), Unfair Competition Law, Cal. Bus. & Prof. Code
10 §§ 17200 *et seq.* ("UCL"), and False Advertising Law, §§ 17500 *et seq.* ("FAL"). Plaintiff brings
11 further causes of action for breach of express and implied warranties, negligent misrepresentation,
12 intentional misrepresentation/fraud, and quasi-contract/unjust enrichment.

13 6. Plaintiff seeks an order compelling Defendant to (a) cease marketing the Products
14 using the misleading and unlawful tactics complained of herein, (b) destroy all misleading
15 deceptive, and unlawful materials, (c) conduct a corrective advertising campaign, (d) restore the
16 amounts by which it has been unjustly enriched, and (e) pay restitution damages and punitive
17 damages, as allowed by law.

18 II. **JURISDICTION AND VENUE**

19 7. This Court has original jurisdiction under 28 U.S.C. § 1332(d)(2) (The Class Action
20 Fairness Act) because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive
21 of interest and costs and because more than two-thirds of the members of the Class reside in states
22 other than the state of which Defendant is a citizen.

23 8. The court has personal jurisdiction over Defendant. Defendant purposely availed
24 itself to California because Defendant does business within this judicial district, sells the Products
25 in this judicial district, and is committing the acts complained of below within this judicial district.

26 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the injury in
27 this case substantially occurred in this District. Defendant has intentionally availed itself of the
28 laws and markets of this District through the promotion, marketing, distribution, and sale of the

Products in this District, and is subject to personal jurisdiction in this District.

III. PARTIES

10. Defendant Quten Research Institute is a limited liability company with a principal place of business located at 10 Bloomfield Avenue, Bldg B, Pine Brook, NJ 07058. Defendant makes, labels, distributes, sells, and markets Qunol branded products throughout the United States and in California. Defendant is responsible for the making, labelling, distribution, selling, and marketing of the Products throughout the applicable statute of limitations period.

11. Plaintiff Anthony Swetala (“Plaintiff”) is a resident of California and purchased the Qunol Extra Strength Turmeric 1000 mg product at a Walmart store located at 1110 East Prosperity Ave., Tulare, CA in or around January 2023. Plaintiff saw the misrepresentations made on the Product label prior to and at the time of purchase and understood them as representations and warranties that each unit of the product contained the advertised dosage amount. Plaintiff relied on the representations made on the Product’s label in deciding to purchase the Product. These representations and warranties were part of his basis of the bargain, in that he would not have purchased the Product, or would only have been willing to purchase the Product at a lower price, had he known the representations were false. Plaintiff would consider purchasing the Product again if the advertising statements made on the Product labels were, in fact, truthful and represented in a manner as not to deceive consumers.

IV. NATURE OF THE ACTION

12. Defendant sells the following Qunol branded products (the “Products”) with misleading dosage representations on the Product packing and labels:

- **Extra Strength Magnesium 420 mg** – Two (2) capsules are required to achieve the advertised dosage of 420 mg.
 - **Magnesium Gummies 200 mg** – Two (2) gummies are required to achieve the advertised dosage of 200 mg.
 - **Extra Strength Turmeric Curcumin Complex 1000 mg** – Two (2) capsules are required to achieve the advertised dosage of 1,000 mg.
 - **Turmeric 2250 mg** – Three (3) capsules are required to achieve the advertised

1 dosage of 2,250 mg.

- 2 • **Turmeric + Ginger 2400 mg** – Three (3) capsules are required to achieve the
3 advertised dosage of 2,400 mg.
- 4 • **Turmeric Gummies 500 mg** – Two (2) gummies are required to achieve the
5 advertised dosage of 500 mg.
- 6 • **Turmeric 500 mg + Ginger 50 mg Gummies** – Two (2) gummies are required to
7 achieve the advertised dosage of 500 mg turmeric and 50 mg ginger.
- 8 • **Turmeric + Ginger Gummies 550 mg** – Two (2) gummies are required to achieve
9 the advertised dosage of 550 mg.
- 10 • **Turmeric + Ginger Chews 750 mg** – Two (2) gummies are required to achieve
11 the advertised dosage of 750 mg.
- 12 • **CoQ10 Gummies 100 mg** – Two (2) gummies are required to achieve the
13 advertised dosage of 100 mg.
- 14 • **Ultra Omega-3 Fish Oil 1000 mg** – Two (2) gummies are required to achieve the
15 advertised dosage of 1,000 mg.

16 13. True and correct copies of the Qunol Products from Defendant's website,
17 www.qunol.com, are shown below:

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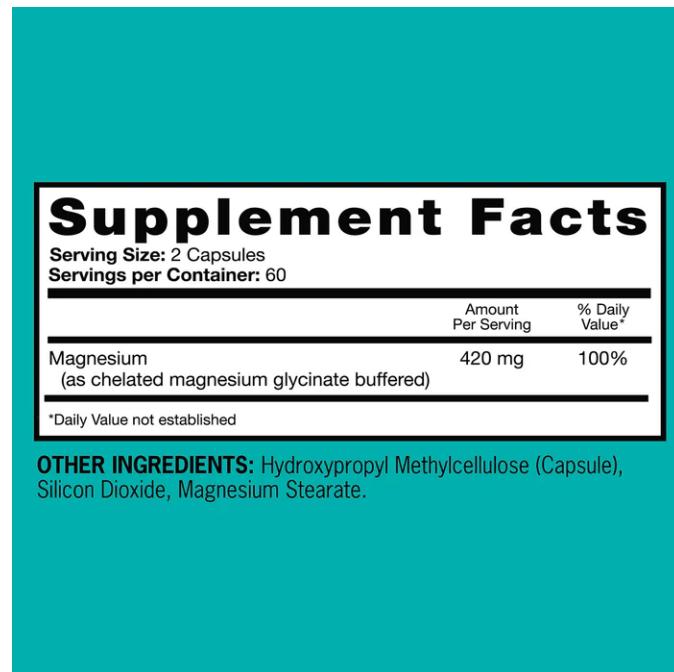
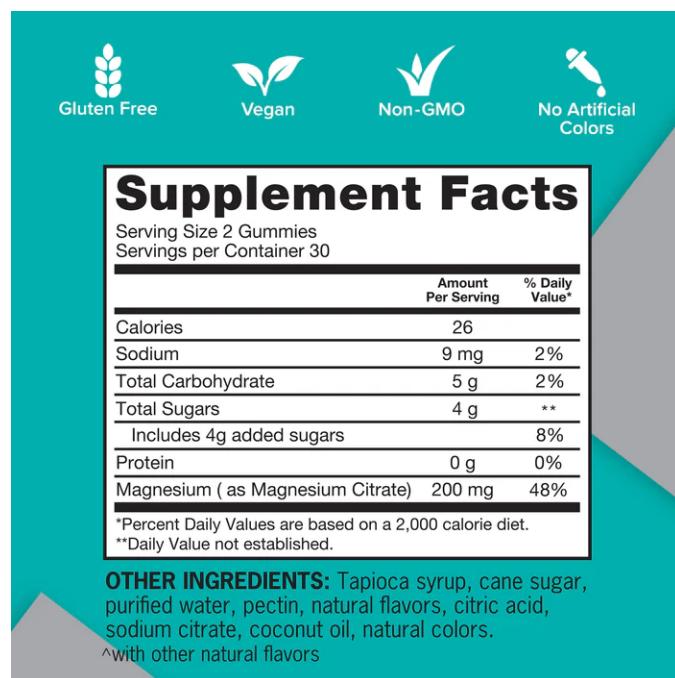
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Extra Strength Magnesium 420 mgMagnesium Gummies 200 mg

Extra Strength Turmeric Curcumin Complex 1000 mg

Supplement Facts		
Serving Size	2 Vegetarian Capsules	
Servings per Container		
Bioenhanced Turmeric Complex	1000 mg	% Daily Value*
(Curcuma Longa) Rhizome (18%-22% Curcuminoids)		**

*Percent of Daily Values are based on a 2,000 calorie diet.
**Daily Value not established.

OTHER INGREDIENTS: Gamma-cyclodextrin, hydroxypropyl methylcellulose (Capsule), oleoresin turmeric, magnesium stearate and silicon dioxide.

FREE OF: Milk or milk by-products, egg or egg by-products, fish or fish by-products, shellfish or shellfish by-products, tree nuts, wheat or wheat by-products, peanuts or peanut by-products, and soybean or soy by-products.



Supplement Facts		
Serving Size	3 Capsules	
Servings per Container		
Calories	8	% Daily Value*
Turmeric Extract (Curcuma longa) (root) std to 95% Curcuminoids	2250mg	**
Black Pepper Root Extract (Piper nigrum) (fruit)	15mg	**

*Percent of Daily Values are based on a 2000 calorie diet.
**Daily Value not established.

#1 TURMERIC SUPPLEMENT BRAND[†]

**1 MONTH
SUPPLY**

*Source: Nielsen Buzztrr FMCG 52 weeks. \$ sales ending 01/01/2022.

Turmeric + Ginger 2400 mg**Supplement Facts**

Serving Size 3 Capsules
Servings per Container 35

	Amount per serving	% Daily Value*
Calories	8	
Turmeric Extract (<i>Curcuma longa</i> (root) std to 95% Curcuminoids)	2250mg	**
Organic Ginger Root Powder	150mg	**
Black Pepper Root Extract	15mg	**

*Percentage of Daily Values are based on a 2,000 calorie diet.

**Daily Value not established

OTHER INGREDIENTS: Vegetable hypromellose capsule, magnesium stearate, silicon dioxide.

5 WEEK SUPPLY

Turmeric Gummies 500 mg**Supplement Facts**

Serving Size 2 Gummies
Servings per Container 30

	Amount Per Serving	% Daily Value*
Calories	25	
Total Carbohydrate	6 g	2%*
Total Sugars	5 g	**
Includes 5g added sugars		10%*
Bioenhanced Turmeric Complex extract 500 mg (<i>Curcuma longa</i>) rhizome		**

*Percent Daily Values are based on a 2,000 calorie diet.

**Daily Value not established.

Turmeric 500 mg + Ginger 50 mg GummiesTurmeric + Ginger Gummies 550 mg

Turmeric + Ginger Chews 750 mg

Supplement Facts		
Serving Size	2 Chews	Servings Per Container
Calories	45	
Total Fat	1 g	1%*
Saturated Fat	0.5 g	3%*
Total Carbohydrate	9 g	3%*
Total Sugars	5 g	**
Includes 5g Added Sugars		9%*
Sodium	20 mg	1%
Qunol® Proprietary Blend:		750mg
Bioenhanced Turmeric Complex		
(from curcuma longa) Extract		
(rhizome) (18-22% curcuminooids),		
Ginger (Zingiber officinale) Extract		
(rhizomes)		
*Percent Daily Values are based on a 2,000 calorie diet.		
**Daily Value not established.		

CoQ10 Gummies 100 mg

Supplement Facts		
Serving Size	2 Gummies	Servings per Container
Calories	20	% Daily Value
Total Carbohydrate	5 g	2%*
Total Sugars	4 g	**
Includes 4g added sugars		8%*
Coenzyme Q10 Ubiquinone	100 mg	**
*Percent of Daily Values are based on a 2,000 calorie diet.		
**Daily Value not established.		

OTHER INGREDIENTS: Tapioca syrup, cane sugar, gamma-cyclodextrin, pectin, natural flavors, citric acid, sodium citrate

Gluten Free
No Artificial Colors
Vegan

Ultra Omega-3 Fish Oil 1000 mg



14. Defendant's dosing representations are prominently and conspicuously displayed in large, bolded font to grab the consumer's attention.

15. Contrary to the prominently advertised dosage amount on each of the Products' labels, each capsule, gummy, or chew contains only a fraction of the advertised dosage amount. For example, consumer must ingest three (3) capsules of the Qunol Turmeric 2250 mg Product to achieve the advertised dosage of 2,250 mg. This leads consumers to overpay for the Products by a significant margin.

16. Defendant's advertising misleads reasonable consumers into believing that each capsule, chew, or gummy unit contains the advertised dosage of nutrients. However, contrary to the labeling, each unit only contains a fraction of the advertised nutrients. Consequently, reasonable consumers believe that they are receiving two or more times the amount of nutrients per Product than what they are actually receiving. As a result, Defendant has charged consumers a premium for the Products, while cutting costs and reaping the financial benefits of selling dietary

1 supplements with less than the advertised dosage of nutrients in each Product.

2 17. The label misrepresentations are material to reasonable consumers, including
 3 Plaintiff. The dosage representations (number of milligrams) and unit representations (number of
 4 capsules, gummies, or chews) convey the type and amount of nutrients provided by the Products,
 5 and the primary purpose of the Products is to provide the amount of nutrients advertised by the
 6 Product labels. Accordingly, reasonable consumers are likely to be deceived by the Products'
 7 labels.

DEMAND FOR DIETARY SUPPLEMENTS AND THE COMPETITIVE MARKET

9 18. Over the past 20 years, there has been a significant increase in the prevalence of
 10 supplement use. The dietary supplement market has been growing in terms of sales and products
 11 available on the market. Consumers are being presented a large number of products, brands, and
 12 formulations, distributed through a wide variety of marketing channels. The value of the global
 13 dietary supplements market was estimated to be worth nearly USD 152 billion in 2021, and is
 14 expected to be worth USD 300 billion by 2028.¹

15 19. In response to consumers' desire for dietary supplements, many companies, like
 16 Defendant, have scrambled to manufacture, market, and sell purportedly high dosages or more
 17 nutrients, at the same or lower costs, in an effort to gain market share and outsell competitors.
 18 Unfortunately, rather than creating the actual high dosage dietary supplements with more nutrients
 19 that consumers desire, Defendant makes products with lower dosages and less nutrients than is
 20 advertised on the Products' packaging and front labels, and then markets them to consumers
 21 through deceptive labeling and packaging claims. In doing so, Defendant misleads consumers into
 22 believing that the Products contain higher dosages or more nutrients in each capsule, gummy, or
 23 chew than what is actually contained therein.

24 20. In contrast to how Defendant labels its Products, Defendant's competitors correctly
 25 label and sell their products to show the correct dosage information on the products' front labels.
 26 For example, NatureMade's Extra Strength Magnesium 400 mg product contains exactly what is

27
 28¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10421343/>

1 says: magnesium tablets each containing 400 mg of magnesium.

2 **NatureMade Magnesium 400 mg²**



SUGGESTED USE: Adults, take 1 softgel daily with water and a meal. Store tightly closed, in a cool, dry place, out of reach of children. Do not use if imprinted seal under cap is broken or missing.	
CAUTION: Do not exceed one softgel daily or take with other products that contain magnesium, unless recommended by your physician. Product may cause gastrointestinal disturbance, including diarrhea. Consult your physician before use if you have kidney disease or are taking medication.	
Supplement Facts Serving Size 1 Softgel Amount Per Softgel % Daily Value Calories 10 Total Fat 0.5 g 1%* Saturated Fat 0.5 g 3%* Magnesium (as Magnesium Oxide) 400 mg 95%	
*Percent Daily Values are based on a 2,000 calorie diet. DISTRIBUTED BY: Nature Made Nutritional Products West Hills, CA 91309-9903, USA 1-800-276-2878 • www.NatureMade.com <small>Encapsulated and quality tested in the USA. Made to our guaranteed purity and potency standards. ★Based on a survey of pharmacists who recommend branded vitamins and supplements.</small>	
<small>Lot #: Exp.:</small>	

16 21. By falsely, misleadingly, and deceptively labeling and advertising the Products,
17 Defendant sought an unfair advantage over its lawfully acting competitors.

18 **PLAINTIFF'S PURCHASES, RELIANCE, AND INJURY**

19 22. Plaintiff Anthony Swetala purchased Qunol Extra Strength Turmeric 1000 mg at a
20 Walmart store located at 1110 East Prosperity Ave., Tulare, CA in or around January 2023 in
21 reliance on the Product's front label advertising.

22 23. In deciding to purchase the Product, Plaintiff read and relied on the dosage
23 information displayed on the front label, which led Plaintiff to believe that each capsule of the
24 product contained the advertised dosage – *i.e.*, 1,000 mg of turmeric per capsule. At the time of
25 purchase, Plaintiff did not know that the advertised dosage was false and misleading, and that more

27 28 ² <https://www.naturemade.com/products/extra-strength-magnesium-400-mg-softgels?variant=17776026681415>

1 than one capsule would need to be consumed to receive the advertised dosage of turmeric.

2 24. Plaintiff would not have purchased the Product, or would not have paid as much as
3 he did for it, had he known that each capsule contained only a fraction of the advertised dosage.
4 Plaintiff paid a premium for the Product due to the misleading labelling on the Product's
5 packaging.

6 25. The representations on the Products' label were and are false and misleading, and
7 had the capacity, tendency, and likelihood to confuse or confound Plaintiff and other consumers
8 acting reasonably (including the putative Class) because, as described in detail herein, the Product
9 labels misrepresent the dosage of each capsule, gummy, or chew.

10 26. Plaintiff acted reasonably in relying on the challenged claims that Defendant
11 intentionally, prominently, and uniformly placed on the Products' label and packaging with the
12 intent to induce average consumers into purchasing them.

13 27. Plaintiff first discovered Defendant's unlawful acts described herein in April of
14 2024 when he learned that Defendant intentionally misrepresented the dosage in the product that
15 he purchased.

16 28. Plaintiff, in the exercise of reasonable diligence, could not have discovered earlier
17 Defendant's unlawful acts described herein because the violations were known to Defendant, and
18 not to him throughout the Class Period herein.

19 29. Plaintiff paid more for the Product, and would only have been willing to pay less
20 or unwilling to purchase it at all, absent the false and misleading labeling statements complained
21 of herein.

22 30. For these reasons, the Product was worth less than what Plaintiff paid for it.

23 31. Plaintiff would like to, and would consider, purchasing the Products again when he
24 can do so with the assurance that the Products' labels are truthful and consistent with the Products'
25 actual ingredients.

26 32. Plaintiff will be unable to rely on the Products' advertising or labeling in the future,
27 and so will not purchase the Products again although he would like to.

28 33. Plaintiff lost money as a result of Defendant's deceptive claims and practices in

that he did not receive what he paid for when purchasing the Product.

34. Plaintiff detrimentally altered his position and suffered damages in an amount equal to the premium he paid for the Product.

35. The senior officers and directors of Defendant allowed the Products to be sold with full knowledge or reckless disregard that the challenged claims are fraudulent, unlawful, and misleading.

SUBSTANTIAL SIMILARITY

36. Defendant's Qunol Products described herein are substantially similar, as they each contain (1) a dosage and unit representation conspicuously and prominently placed on the primary display panel of the Products' front labels, and (2) require consumption of two or more units to obtain the advertised dosage of nutrients.

37. The misleading advertising on the Products' front labels are all the same: consumers are led to believe that each capsule, gummy, or chew contains the advertised dosage amount; however, the Products only contain half or a third of the amount of nutrients advertised. Consumers therefore only receive half or a third of the amount of nutrients promised and pay more than what the Products would be worth had Defendant's advertising been true.

V. CLASS ACTION ALLEGATIONS

38. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff seeks certification of the following Classes (or alternative Classes or Subclasses), for the time period from when the mislabeled Qunol products first entered into the stream of commerce until the present (“Class Period”), defined as follows:

The Nationwide Class

All U.S. citizens who purchased the Products in their respective state of citizenship for personal and household use and not for resale during the Class Period.

The California Subclass

All California citizens who purchased the Products in California for personal and household use and not for resale during the Class Period.

39. The Classes and Subclasses described in this complaint will jointly be referred to

1 the “Class” or the “Classes” unless otherwise stated, and the proposed members of the Classes and
2 Subclasses will jointly be referred to as “Class Members.”

3 40. Plaintiff and the Class reserve their right to amend or modify the Class definitions
4 with greater specificity or further division into subclasses or limitation to particular issues as
5 discovery and the orders of this Court warrant.

6 41. Excluded from the Class are governmental entities, Defendant, any entity in which
7 Defendant has a controlling interest, Defendant’s employees, officers, directors, legal
8 representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies,
9 including all parent companies, and their employees; and the judicial officers, their immediate
10 family members and court staff assigned to this case.

11 42. The members in the proposed Class are so numerous that individual joinder of all
12 members is impracticable. Due to the nature of the trade and commerce involved, however,
13 Plaintiff believes the total number of Class members is at least in the hundreds and members of
14 the Classes are numerous. While the exact number and identities of the Class members are
15 unknown at this time, such information can be ascertained through appropriate investigation and
16 discovery. The disposition of the claims of the Class members in a single class action will provide
17 substantial benefits to all parties and to the Court.

18 43. Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on grounds
19 generally applicable to the Classes, thereby making final injunctive relief or corresponding
20 declaratory relief and damages as to the Products appropriate with respect to the Classes as a
21 whole. In particular, Defendant has failed to disclose the true nature of the Products being marketed
22 as described herein.

23 44. There is a well-defined community of interest in the questions of law and fact
24 involved, affecting the Plaintiff and the Classes and these common questions of fact and law
25 include, but are not limited to, the following:

- 26 • Whether Defendant breached any express warranties made to Plaintiff and the
27 Class;
28 • Whether Defendant breached any implied warranties made to Plaintiff and the

1 Class;

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- Whether Defendant violated consumer protection statutes, false advertising statutes, or state deceptive business practices statutes;
 - Whether Defendant engaged, and continues to engage, in unfair or deceptive acts and practices in connection with the marketing, advertising, and sales of the Products;
 - Whether reasonable consumers are likely to be misled by Defendant's advertising and labeling of the Products;
 - Whether the Products' challenged representations are material representations made to reasonable consumers;
 - Whether the proposed class is suitable for class certification;
 - The proper amount of restitution, damages, and punitive damages;
 - The proper injunctive relief, including a corrective advertising campaign;
 - The proper amount of attorneys' fees.

15 45. These common questions of law and fact predominate over questions that affect
16 only individual Class Members.

17 46. Plaintiff's claims are typical of Class Members' claims because they are based on
18 the same underlying facts, events, and circumstances relating to Defendant's conduct. Specifically,
19 all Class Members, including Plaintiff, were subjected to the same misleading and deceptive
20 conduct when they purchased the Products, and suffered economic injury because the Products
21 were and still are misrepresented. Absent Defendant's business practice of deceptively and
22 unlawfully labeling the Products, Plaintiff and Class Members would not have purchased the
23 Products, or would have paid less for them.

24 47. Plaintiff will fairly and adequately represent and protect the interests of the Classes,
25 has no interests incompatible with the interests of the Classes, and has retained counsel with
26 substantial experience in handling complex consumer class action litigation. Plaintiff and his
27 counsel are committed to vigorously prosecuting this action on behalf of the Classes and have the
28 financial resources to do so.

1 48. Plaintiff and the members of the Classes suffered, and will continue to suffer harm
2 as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other
3 available methods for the fair and efficient adjudication of the present controversy. Individual
4 joinder of all members of the Classes is impracticable. Even if individual Class members had the
5 resources to pursue individual litigation, it would be unduly burdensome to the courts in which the
6 individual litigation would proceed. Individual litigation magnifies the delay and expense to all
7 parties in the court system of resolving the controversies engendered by Defendant's common
8 course of conduct. The class action device allows a single court to provide the benefits of unitary
9 adjudication, judicial economy, and the fair and efficient handling of all Class members' claims in
10 a single forum. The conduct of this action as a class action conserves the resources of the parties
11 and of the judicial system and protects the rights of the class members. Furthermore, for many, if
12 not most, a class action is the only feasible mechanism that allows an opportunity for legal redress
13 and justice.

14 49. Adjudication of individual Class members' claims with respect to Defendant
15 would, as a practical matter, be dispositive of the interests of other members not parties to the
16 adjudication, and could substantially impair or impede the ability of other class members to protect
17 their interests.

18 50. Defendant has acted on grounds applicable to the Class, thereby making appropriate
19 final public injunctive and declaratory relief concerning the Class as a whole.

51. As a result of the foregoing, class treatment is appropriate.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law,

Cal. Bus. & Prof. Code §§ 17200 *et seq.*

(on behalf of the California Class)

52. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if
set forth in full herein.

²⁸ || 53. California's Unfair Competition Law, Business and Professions Code §17200 (the

UCL") prohibits any "unfair, deceptive, untrue or misleading advertising." For the reasons discussed above, Defendant has engaged in unfair, deceptive, untrue and misleading advertising, and continues to engage in such business conduct, in violation of the UCL.

54. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.”

Fraudulent

55. A statement or practice is “fraudulent” under the UCL if it is likely to mislead or deceive the public, applying an objective reasonable consumer test.

56. As set forth herein, Defendant's claims relating to the Products are likely to mislead reasonable consumers to believe that each capsule, gummy, or chew unit in the Products contained the dosage amount advertised on the Products' front labels.

57. Defendant's conduct caused and continues to cause substantial injury to Plaintiff and the other Class members. Plaintiff has suffered injury in fact as a result of Defendant's unfair conduct. Defendant has thus engaged in unlawful, unfair and fraudulent business acts and practices and false advertising, entitling Plaintiff and the Class to public injunctive relief against Defendant, as set forth in the Prayer for Relief.

58. Pursuant to Business and Professions Code § 17203, Plaintiff and the Class seek an order requiring Defendant to immediately cease such acts of unlawful, unfair and fraudulent business practices and requiring Defendant to engage in a corrective advertising campaign.

59. Plaintiff also seeks an order for the disgorgement and restitution of the premium received from the sale of the Products the Class Members purchased, which was unjustly acquired through acts of unlawful, unfair, and/or fraudulent competition, and attorneys' fees and costs.

Unlawful

60. The acts alleged herein are “unlawful” under the UCL in that they violate at least the following laws:

- By knowingly and intentionally concealing from Plaintiff and the other Class members that each unit of the Products did not contain the advertised dosage;

- 1 • By misrepresenting the dosage of the Products on the front label;
 - 2 • By engaging in the conduct giving rise to the claims asserted in this complaint;
 - 3 • By violating California Civil Code §§ 1709-1711 by making affirmative
4 misrepresentations about the Products;
 - 5 • By violating California Civil Code §§ 1709-1711 by suppressing material
6 information about the Products;
 - 7 • By violating the California Commercial Code for breaches of express and implied
8 warranties;
 - 9 • By violating California's Sherman Act, Cal. Health & Safety Code § 110390, which
10 prohibits drug and cosmetics labelling that is "false or misleading in any
11 particular";
 - 12 • By violating the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
 - 13 • By violating the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*
- 14 61. Such conduct is ongoing and continues to this date.

15 62. Plaintiff and the Class reserve the right to allege other violations of law, which
16 constitute other unlawful business acts or practices.

17 Unfair

18 63. Defendant's acts, omissions, misrepresentations, practices and nondisclosures as
19 alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL
20 in that its conduct is substantially injurious to consumers, offends public policy, and is immoral,
21 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged
22 benefits attributable to such conduct. In the alternative, Defendant's business conduct as described
23 herein violates relevant laws designed to protect consumers and businesses from unfair
24 competition in the marketplace. Such conduct is ongoing and continues to date.

25 64. Defendant's conduct with respect to the labeling, advertising, and sale of the
26 Products was and is also unfair because it violates public policy as declared by specific
27 constitutional, statutory or regulatory provisions, including but not limited to the Consumers Legal
28 Remedies Act, the False Advertising Law, and portions of the California Sherman Food, Drug,

and Cosmetic Law.

65. Defendant's conduct with respect to the labeling, advertising, and sale of the Products was and is also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

66. Defendant profited from its sale of the falsely, deceptively, and unlawfully advertised and packaged Products to unwary consumers.

67. Plaintiff and Class Members are likely to continue to be damaged by Defendant's deceptive trade practices, because Defendant continues to disseminate misleading information on the Products' packaging. Thus, public injunctive relief enjoining Defendant's deceptive practices is proper.

68. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

69. Class-wide reliance can be inferred because Defendant's misrepresentations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy the Products.

70. Defendant's misrepresentations were a substantial factor and proximate cause in causing damages and losses to Plaintiff and Class members.

71. Plaintiff and the Classes were injured as a direct and proximate result of Defendant's conduct because (a) they would not have purchased the Products if they had known the truth and (b) they overpaid for the Products because the Products are sold at a price premium due to the misrepresentations.

SECOND CAUSE OF ACTION

Violations of the False Advertising Law,

Cal. Bus. & Prof. Code §§ 17500 *et seq.*

(on behalf of the California Class)

72. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth herein.

73. The FAL provides that “[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services” to disseminate any statement “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading” Cal. Bus. & Prof. Code § 17500.

74. It is also unlawful under the FAL to disseminate statements concerning property or services that are “untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” *Id.*

75. As alleged herein, Defendant falsely advertised the Products by falsely representing that each unit of the Products contained the advertised dosage, when in fact, a consumer would need to take two or more units to achieve the advertised dosage.

76. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendant's actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff purchased the Products in reliance on Defendant's false and misleading labeling claims that each unit of the Products contained the advertised dosage.

77. Defendant's business practices as alleged herein constitute deceptive, untrue, and misleading advertising pursuant to the FAL because Defendant has advertised the Products in a manner that is untrue and misleading, which Defendant knew or reasonably should have known, and omitted material information from its advertising.

78. Defendant profited from its sale of the falsely and deceptively advertised Products to unwary consumers.

79. As a result, Plaintiff, the Class, and the general public are entitled to public injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was unjustly enriched.

80. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of himself and the Class, seeks an order enjoining Defendant from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth herein.

THIRD CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*

(on behalf of the California Class)

81. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

82. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

83. Defendant's false and misleading labeling and other policies, acts, and practices were designed to, and did, induce the purchase and use of the Products for personal, family, or household purposes by Plaintiff and Class Members, and violated and continue to violate the following sections of the CLRA:

- § 1770(a)(5): Representing that goods have characteristics, uses, or benefits which they do not have;
 - § 1770(a)(7): Representing that goods are of a particular standard, quality, or grade if they are of another; and
 - § 1770(a)(9): Advertising goods or services with intent not to sell them as advertised.

84. Defendant profited from the sale of the falsely, deceptively, and unlawfully advertised Products to unwary consumers.

85. Defendant's wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the CLRA.

86. On April 24, 2024, Plaintiff sent a notice letter to Defendant's principal place of business which complies with California Civil Code § 1782(a). Plaintiff sent Defendant individually and on behalf of the proposed Class, a letter via Certified Mail, demanding that Defendant rectify the actions described above by providing injunctive and monetary relief to all affected consumers.

87. More than thirty days have passed since Plaintiff sent Defendant a CLRA letter and

1 Defendant has failed to take the corrective action described in Plaintiff's letter. Wherefore,
2 Plaintiff seeks damages, restitution, injunctive relief, punitive damages, and attorneys' fees and
3 costs for Defendant's violations of the CLRA.

4 **FOURTH CAUSE OF ACTION**

5 **Breach of Express Warranties,**

6 **Cal. Com. Code § 2313(1)**

7 **(*on behalf of all Classes*)**

8 88. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if
9 set forth in full herein.

10 89. Through the Products' label and advertising, Defendant made affirmations of fact
11 or promises, or description of goods, described above, which were "part of the basis of the
12 bargain," in that Plaintiff and the Class purchased the Products in reasonable reliance on those
13 statements. Cal. Com. Code § 2313(1).

14 90. The foregoing representations were material and were a substantial factor in
15 causing the harm suffered by Plaintiff and the Class because they concerned the allegation that
16 Defendant misrepresented the dosage of each unit of the Products.

17 91. These representations had an influence on consumers' decisions in purchasing the
18 Products.

19 92. Defendant made the above representations to induce Plaintiff and the members of
20 Class to purchase the Products. Plaintiff and the Class members relied on the representations when
21 purchasing Defendant's Products.

22 93. Defendant breached the express warranties by selling Products with false and
23 misleading advertised dosage amounts.

24 94. That breach actually and proximately caused injury in the form of the price
25 premium that Plaintiff and Class members paid for the Products.

26 **FIFTH CAUSE OF ACTION**

27 **Breach of Implied Warranties**

28 **Cal. Com. Code § 2314**

(on behalf of all Classes)

95. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

96. Defendant, through its acts and omissions set forth herein, in the sale, marketing, and promotion of the Products, misrepresented the dosage amount of the Products to Plaintiff and the Class.

97. Plaintiff and the Class purchased the Products manufactured, advertised, and sold by Defendant, as described herein.

98. Defendant is a merchant with respect to the goods of this kind which were sold to Plaintiff and the Class, and there was, in the sale to Plaintiff and other consumers, an implied warranty that those goods were merchantable.

99. However, Defendant breached that implied warranty in that the Products did not contain the represented dosage in each unit of the Products, and instead, a person would need to ingest multiple capsules, gummies, or chews to achieve the advertised dosage.

100. As an actual and proximate result of Defendant's conduct, Plaintiff and the Class did not receive goods as impliedly warranted by Defendant to be merchantable in that the Products did not conform to promises and affirmations made on the label of the Products.

101. Plaintiff and the Class have sustained damages as a proximate result of the foregoing breach of implied warranty in the amount of the Products' price premium.

SIXTH CAUSE OF ACTION

Negligent Misrepresentation

(on behalf of all Classes)

102. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

103. Defendant had a duty to disclose to Plaintiff and Class Members correct information as to the quality and characteristics of the Products because Defendant was in a superior position than Plaintiff and Class Members such that reliance by Plaintiff and Class Members was justified. Defendant possessed the skills and expertise to know the type of

1 information that would influence a consumer's purchasing decision.

2 104. During the applicable Class period, Defendant negligently or carelessly
 3 misrepresented, omitted, and concealed from consumers material facts regarding the quality and
 4 characteristics of the Products, including the amount of nutrients contained in each capsule,
 5 gummy, or chew.

6 105. Defendant made such false and misleading statements and omissions with the intent
 7 to induce Plaintiff and Class Members to purchase the Products at a premium price.

8 106. Defendant was careless in ascertaining the truth of its representations in that it knew
 9 or should have known that Plaintiff and Class Members would be overpaying for Products that
 10 contained substantially less milligrams per unit than advertised.

11 107. Plaintiff and Class Members were unaware of the falsity in Defendant's
 12 misrepresentations and omissions and, as a result, justifiably relied on them when making the
 13 decision to purchase the Products.

14 108. Plaintiff and Class Members would not have purchased the Products or paid as
 15 much for the Products if the true facts had been known.

SEVENTH CAUSE OF ACTION

Intentional Misrepresentation/Fraud

(on behalf of all Classes)

19 109. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if
 20 set forth in full herein.

21 110. Defendant had a duty to disclose to Plaintiff and Class Members correct
 22 information as to the quality and characteristics of the Products because Defendant was in a
 23 superior position than Plaintiff and Class Members such that reliance by Plaintiff and Class
 24 Members was justified. Defendant possessed the skills and expertise to know the type of
 25 information that would influence a consumer's purchasing decision.

26 111. During the applicable Class period, Defendant intentionally misrepresented,
 27 omitted, and concealed from consumers material facts regarding the quality and characteristics of
 28 the Products, including the dosage amount of each capsule, gummy, or chew. These

representations were material and were uniformly made.

112. As noted in detail above, these representations were false and misleading, as each unit of the Products contained only a fraction of the advertised dosage. Defendant made these misrepresentations with actual knowledge of their falsity and/or made them with fraudulent intent.

113. Defendant made such false and misleading statements and omissions with the intent to induce Plaintiff and Class Members to purchase the Products at a premium price, deprive Plaintiff and Class Members of property or otherwise causing injury, and thus, Defendant has committed fraud.

114. Defendant's deceptive or fraudulent intent is evidenced by motive and opportunity. Defendant knew that consumers would pay more for a product if they believed they were receiving a higher dosage than that of competitors' lawfully labeled products. For that reason, Defendant misrepresented the dosage of its Products so that Defendant could realize greater profits. Defendant knew that consumers would place trust and confidence in its Products' claims and rely thereon in their purchases of the Products.

115. Plaintiff and the Class Members were unaware of the falsity in Defendant's misrepresentations and omissions and, as a result, justifiably relied on them when making the decision to purchase the Products.

116. As a proximate result of Defendant's intentional misrepresentations, Plaintiff and the Class were induced to purchase the Products at a premium.

117. Plaintiff and the Class Members would not have purchased the Products or paid as much for the Products if the true facts had been known.

118. As a result of their reliance, Plaintiff and Class Members were injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase.

119. Defendant's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and Class Members Plaintiff and Class Members are therefore entitled to an award of punitive damages.

EIGHTH CAUSE OF ACTION

Quasi-Contract/ Unjust Enrichment

(on behalf of all Classes)

120. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

121. As alleged in detail above, Defendant's false and misleading labelling caused Plaintiff and the Class to purchase the Products at a premium.

122. In this way, Defendant received a direct and unjust benefit, at Plaintiff and the Class's expense.

123. It would be unjust and inequitable for Defendant to retain the above-mentioned benefits. For example, Defendant was only able to charge a premium for the Products by intentionally withholding information from Plaintiff, or otherwise misrepresenting the Products' qualities.

124. Plaintiff and the Class seek restitution.

VII. PRAYER FOR RELIEF

125. Wherefore, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for judgment against Defendant as follows:

- For an order certifying this action as a class action, appointing Plaintiff as the Class Representative, and appointing Plaintiff’s Counsel as Class Counsel;
 - For an order declaring that Defendant’s conduct violates the statutes and laws referenced herein, consistent with applicable law and pursuant to only those causes of action so permitted;
 - For an order awarding monetary compensation in the form of damages, restitution, and/or disgorgement to Plaintiff and the Class, consistent with permissible law and pursuant to only those causes of action so permitted;
 - For an order awarding punitive damages, statutory penalties, and/or monetary fines, consistent with permissible law and pursuant to only those causes of action so permitted;
 - For an order awarding attorneys’ fees and costs, consistent with permissible law

1 and pursuant to only those causes of action so permitted;

- 2
- 3
- 4
- For an order awarding pre-judgment and post-judgment interest, consistent with
permissible law and pursuant to only those causes of action so permitted; and
 - For such other and further relief as the Court deems just and proper.

5 **JURY DEMAND**

6 Plaintiff hereby demands a trial by jury on all issues so triable.

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8

9 Dated: May 24, 2024

LAW OFFICES OF RONALD A. MARRON

10

11 */s/ Ronald A. Marron*
Ronald A. Marron

12

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